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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 2nd June 1953

S.R.O. 1130.—WHEREAS the election of Shri Ganga Singh, as a member of the Legislative Assembly of the State of Rajasthan, from the Nagaur East constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Satish Chand, S/o Shri Prabhu Lal, Resident of Nagaur, District Nagaur;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJASTHAN, BIKANER

ELECTION PETITION No. 328 OF 1952.

Sri Satish Chander S/o Prabhlul, resident of Nagaur, Rajasthan—*Petitioner.*

Versus

1. Shri Ganga Singh, Pleader, Basika Mohalla, Nagaur.
2. Shri Ram Kishore, Mirdhon Ka Dera, Jodhpur.
3. Shri Allanoor, Ghasmandi, Jodhpur.
4. Shri Nasar Ahmed, Jalap Mohalla, Jodhpur.
5. Shri Bal Krishna, Bhura Wadi, Nagaur.
6. Shri Mahomed Bux, Nakhas Mohalla, Nagaur.
7. Shri Har Narain, Hathi Chowk, Nagaur.
8. Shri Shiv Dayal, Nai Wara, Nagaur.
9. Shri Mohd. Umar, Loharpura, Nagaur.
10. Shri Mohd. Haneef, resident of Sojat, District Pali.
11. Shri Barkatullah Khan, Jodhpur.
12. Shri Mohan Singh Bhati, Jodhpur.
13. Shri Rama Kishan, Loyon Ka Chowk, Nagaur.
14. Shri Kamal Chand, near Bara Mandir, Nagaur.
15. Shri Hastimal, Candhibari, Nagaur.
16. Shri Nemichand S/o Kanialal, Dantiyaon-Ki-Gali, Nagaur.—*Respondents.*

[1959]

ELECTION PETITION UNDER SECTION 81 OF THE REPRESENTATION OF THE PEOPLE ACT 1951 CALLING IN QUESTION THE ELECTION OF THE RESPONDENT NO. 1 TO THE RAJASTHAN LEGISLATIVE ASSEMBLY, FROM THE NAGOUR EAST CONSTITUENCY.

Petitioner through Shri Mukat Behari Lal Bhargava assisted by Shri Basheswar Nath Bhargava, and Shri Rawatmal Kochar and Shri Bhanwarlal.

The Respondent No. 1 through Shri Thanchand Mehta and Shri Bhopal Singh.
Other respondents—absent.

JUDGMENT

1. This election petition has been filed by the petitioner, who was a candidate for election to the Rajasthan Legislative Assembly from the Nagaur East Constituency during the last general elections, for a declaration that the election of the respondent No. 1 the successful candidate to the Rajasthan Legislative Assembly from the above constituency be declared as void. The grounds alleged by him are that his nomination paper has been improperly and illegally rejected by the Returning Officer and that on account of the improper rejection of his nomination paper, the result of the election has been materially affected. The order passed by the Returning Officer rejecting the petitioner's nomination paper is as under:

"I have scrutinised the eligibility of the candidate the proposer and the seconder and find that they are respectively qualified to stand for election, to propose and to second the nomination. As father's name does not tally, the nomination paper is rejected."

The contention of the petitioner, as stated by him in his petition is, that he had written his father's name in the nomination paper as Prabhu Lal and not Prabhu Dayal as was entered in the electoral roll, because his father was known both as Prabhu Lal and Prabhu Dayal, that he is the only person known as Satish Chand whom the Returning Officer knew personally that his identity was not in doubt, that the Returning Officer, in rejecting his nomination paper, has ignored the mandatory provisions of the Representation of the People Act, 1951 viz. that no nomination paper shall be rejected on the ground of any technical defect which is not of a substantial character, that the difference of "Lal" and "Dayal" in his father's name was only of a minor and technical nature and that his nomination paper had sufficiently complied with the requirements of law and as such the same should not have been rejected.

3. The respondent No. 1 who is the returned candidate has alone filed his reply wherein he has denied that the nomination paper of the petitioner, has been improperly rejected, and has further asserted that the father's name of the petitioner, as given in the nomination paper, was altogether different from that entered in the electoral roll inasmuch as it was entered in the electoral roll as "Prabhu Dayal" and not as "Prabhu Lal" as stated by the petitioner, and that the petitioner's father was never known as Prabhu Dayal, nor was the attention of the Returning Officer drawn to this fact by the petitioner or any other person on his behalf at the time of the scrutiny of the nomination paper in question to dispel the doubts of the Returning Officer, who had no option but to reject it. In addition to this, he has also stated that even today there is a school teacher bearing the same name as that of the petitioner and there may be several others also bearing this name. Under these circumstances he says that the identity of the petitioner could not be ascertained. So far as the remaining allegations of improper rejection of the petitioner's nomination paper are concerned, they have been denied by the respondent No. 1.

Before the framing of the issues, the Tribunal recorded the statement of the petitioner on 29th November, 1952 wherein he has stated that he does not know if, there was any school teacher bearing the same name as his and also if any person bearing the same name was a school teacher, at Nagaur at the time of the scrutiny and that though his name is Satish Chandra, he also signs as Satish Chand.

On the above pleadings the Tribunal framed the following issues:—

Issue No. 1.—Was the nomination paper of the petitioner improperly rejected by the Returning Officer as alleged?

Issue No. 2.—If so, has it materially affected the result of the election?

Issue No. 3.—Is the petitioner estopped from questioning the validity of the election for reasons mentioned in paras. 11 and 12 of the written statement?

Issue No. 4.—Is the petition liable to be dismissed as alleged in para. 13 of the written statement?

Issue No. 5.—To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 1.—In the affirmative.

Issue No. 2.—In the affirmative.

Issue No. 3.—In the negative.

Issue No. 4.—In the negative.

Issue No. 5.—Petition allowed and the election of the respondent No. 1 from the Nagaur East, declared as void.

REASONS

Issue No. 1.—During the last general elections for the Rajasthan Legislative Assembly, as many as seventeen nomination papers had been filed including that of the petitioner for one seat from the Nagaur East constituency, out of which the nomination papers of the petitioner and the respondent Nos. 13 to 15 were rejected by the Returning Officer and the respondent Nos. 7 to 12 withdrew from the contest, thus leaving the respondent Nos. 1 to 6 in the area of the election contest.

The petitioner's case is that his nomination paper has been improperly rejected by the Returning Officer on the ground of difference in the petitioner's father's name and he contends that the difference of Lal and Dayal on account of which the Returning Officer has rejected the nomination paper in question, is very immaterial and insignificant specially when there was absolutely no doubt in the Returning Officer's mind about the petitioner's identity or in the alternative it was at the most a technical defect on account of which the nomination paper could not be rejected as laid down in section 36(4) of the Representation of the People Act, 1951 which reads as under:—

"The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character."

He further contends that the Returning Officer as a matter of fact, has given a definite finding in favour of the petitioner, regarding the latter's identity, in the order passed by him on the nomination paper in question, when he has said that after having scrutinised the eligibility of the candidate, the proposer and the seconder, he has found that they were respectively qualified to stand for election, to propose and second the nomination, and in view of this finding there was no option left for the Returning Officer, but to have accepted the petitioner's nomination paper.

As against the above contentions of the petitioner, the learned counsel for the respondent No. 1 has contended that the Returning Officer was perfectly justified in rejecting the petitioner's nomination paper inasmuch as the entries of the petitioner's name in the electoral roll, are different from those in the nomination paper Ex-1 in three respects viz: (1) that in the electoral roll the father's name is shown as "Grabhu" instead of "Frabhu", (2) it is shown as "Dayal" instead of "Lal" and (3) the petitioner's name is shown as Satish Chandra instead of Satish Chand by which name he is ordinarily known the cumulative effect of which was that the identity of the petitioner with that of the name against serial No. 483 in the electoral roll which was being claimed by the petitioner, was not proved by him before the Returning Officer who had no option left but to reject the nomination. It has further been contended on behalf of the respondent No. 1 by his learned counsel that there is another Satish Chand as school master in Nagaur living in the house bearing No. 6116 in which the petitioner is alleged to have lived. This fact according to the learned counsel throws considerable doubt as to the petitioner's identity.

It appears that the petitioner was unable to be present on the date of the scrutiny of the nomination papers which took place on 28th November, and as such asked his proposer Shri Murli Manohar P.W. 5 pleader of Nagaur, to be present and answer the objections if any, which may be raised against his nomination paper, but unfortunately Shri Murli Manohar had to leave the court room of the Returning Officer for some urgent work, and he therefore left instructions with his friend Shri Ram Kishan Kalla P. W. 6, another pleader of Nagaur, that if any objection as to the father's name was raised, he should tell the Returning Officer that there was no difference between Prabhu Lal and Prabhu Dayal as he was known by both the names, and that he should call him if necessary. It so happened that as soon as Shri Murli Manohar left, the Returning Officer took up the petitioner's nomination paper and rejected it on his own initiative on the ground of the difference of "Lal" and "Dayal" in the petitioner's father's name after hearing Shri Ram Kishan Kalla, though he felt that "Grabhu" was a misprint for "Prabhu". In this

connexion the evidence of the Returning Officer who has been examined as P.W. 1, is in itself quite sufficient to come to a conclusion that I wrongly rejected the petitioner's nomination paper. He has stated before us that he knew the petitioner that no objection was taken against the petitioner's nomination paper by any one present there, that the only reason of rejection was that there was difference of "Lal" and "Dayal" in the petitioner's father's name, that he made no enquiries from the persons present whether there was any Satish Chandra other than the petitioner, that he has never come across any man called "Grabhu" and that in Hindi "Prabhu" can easily be read as "Grabhu". The petitioner, in order to prove that he is the same person whose name is entered against the serial number 483 in the electoral roll, has examined (1) Shri Mahmed Abdul Rehman, Munsif, Nagaur, P.W. 2 to prove that he had voted against the entry serial number 483 in the general elections without any objection having been raised either by the respondent No. 1 or by his agent, (2) Shri Mahavir Chand, Reader of the court of the Munsif, Nagaur, who had issued the identification slip to the petitioner, both for the Assembly and the House of the People, without any objection being raised on behalf of the respondent No. 1, (3) Shri Bridhichand, P.W. 4, the landlord of the House No. 6116 in Mohalla Challani in Nagaur who has stated that the petitioner lived in this house as his tenant from March, 1949 to June or July, 1951 and that no other Satish Chander except the petitioner lived in it, (4) Shri Murli Manohar a pleader of Nagaur, P.W. 5, who has deposed that the petitioner lived in the house No. 6116 ward No. 18 from 1949 to the middle of 1951 and that he never saw any other Satish Chandra living in that house, (5) Shri Ram Kishan Kala, another pleader of Nagaur, P.W. 6, who supports the evidence of P.W. 5 on this point and lastly himself. Apart from this oral evidence, he has produced before us (1) the original manuscript of the electoral roll which was summoned by us from the Collector Nagaur from which the entries against serial numbers 441 to 499 (covering the serial No. 483) have been produced and marked as Ex. 3 which show the petitioner's name his house number and caste as Pushkarna Brahmin and which have been proved by the witness Pukh Raj, P.W. 7 to have been written by one Ghayasuddin a school teacher at Nagaur who has gone away to Pakistan, and who was put on duty to prepare the voters list in ward No. 18 in Nagaur Town, (2) the original electoral roll used by the Presiding Officer at the time of polling of ward No. 18 to show that the petitioner actually exercised his vote from this ward for the Assembly and the House of the People. As against this evidence, the respondent No. 1 has examined himself, and one Harnarain R.W. 2 and another Satish Chand Jain, a school teacher in Nagaur who is alleged to have lived in the house No. 6116 where the petitioner lived. The sum and substance of the evidence of these three witnesses is (1) that at the time of the scrutiny of the petitioner's nomination paper neither the petitioner nor any person on his behalf was present, that the Returning Officer, after discussing the nomination paper in question with those who were present, expressed that he did not consider Prabhu Dayal as Prabhu Lal whereas he admitted that "Grabhu" may be a misprint for "Prabhu" and therefore he rejected it, (2) that the petitioner is known as Satischand and not as Satishchand, (3) that there is another Satishchand a teacher at Nagaur who has been visiting Nagaur since 1949, and has been living there from July, 1951, in the house in question and it is this Satish Chand whose name is entered against serial number 483 in the electoral roll. We have very carefully gone through this evidence of the respondent No. 1 to find out if Satishchand R.W. 3 is the person who is entered in the electoral roll of this constituency against serial number 483, and we are of the opinion that he is an imposter for Satish Chand whose name appears against this serial number. The evidence of Satish Chand, who from a school teacher became a Jain scholar, shows that it is false in important respects, viz., (1) that his father's name is Ram Kumar and not Prabhu Dayal or Prabhu Lal though he says that he was also called Prabhu Dayal, which we are not prepared to believe, (2) that his name is entered in the voter's list at Jaipur where he exercised his vote, (3) that he never lived in the house No. 6116 as he has neither examined any of the sons of the owner of this house, (4) that he got a room in this house not from the owners directly but from their nephew, (5) that he shifted from Jaipur to Nagaur without his salary having been settled and (6) that his father's name is nowhere entered as Prabhu Dayal. This witness while he was being examined gave us an impression that he had come prepared to give false evidence for the respondent No. 1 for reasons best known to him. His demeanour in the witness box was far from satisfactory and he took fairly long time to answer the questions which were put to him in cross examination. Therefore taking into consideration the evidence led by the respondent No. 1 on this point that it is this Satish Chand R.W. 3, whose name is entered against serial No. 483 in the electoral roll, and not that of the petitioner along with the oral and documentary evidence led by the petitioner on this point, we are clearly of the opinion that the entry against serial No. 483 in the electoral roll relates to the petitioner and not this Satishchand R.W. 3, who has given a positively false evidence just to oblige the respondent No. 1.

The next question that remains for consideration is whether the difference in the father's name of the petitioner *viz.*, Prabhu Dayal in place of Prabhu Lal, is such a material and substantial difference so as to invalidate the petitioner's nomination paper. The learned counsel for the respondent No. 1 has very vehemently argued before us that he should take into consideration the cumulative effect of Prabhu Dayal in place of the real name Prabhulal and Satish Chand as Satish Chander. In order to see whether the order passed by the Returning Officer rejecting the petitioner's nomination paper is proper or not, we have to take into consideration as to what transpired before him on the date of scrutiny, and also if there were sufficient materials before him we shall take into consideration other grounds, if any, which were not urged before the Returning Officer at the time of scrutiny, and which would otherwise invalidate the nomination paper. In view of the admission of the Returning Officer before us that he accepted "Grabhu" as a misprint for "Prabhu", in the electoral roll, it is not necessary to give any importance to this fact as we also feel that it is due to printer's devil. So far as the difference of Satish Chand and Satish Chandra is concerned, in our opinion, it is too trivial to have either been considered by the Returning Officer or by us. Then there remains only the difference of "Dyal" and "Lal". In our opinion this is not a material difference at all, as both "Dayal" and "Lal" are suffixes to the name "Prabhu" and do not necessarily form part of the name, as a person may be known or called both as Prabhu Dayal and Prabhu Lal, without introducing the least change in his name so as to cast a doubt as to his identity. In our opinion by this little variation in the father's name, the petitioner's identity could not be successfully challenged nor does the same appear to have been doubted by the Returning Officer before rejecting the nomination paper of the petitioner. Beside this we are of the opinion, that this little variation at the most amounted to a technical defect which is not of a substantial character so as to invalidate a nomination paper. In this connection, the learned counsel for the petitioner has referred us to the case of Rai Bahadur Pirthichand Lal Chaudhuri *Versus* Babu Ram Pershad on page 54 of the Indian Election cases by Jagat Vol. I in which also the word "Lal" which appeared in the father's name of the candidate's seconder in the electoral roll, did not appear in the nomination paper and the Election Tribunal held that this omission did not make any difference and as such the nomination paper in question was improperly rejected. Another case to which our attention has been drawn in this connection is the case of Sardar Harcharan Singh *Versus* Sardar Narotam Singh, reported on page 77, of Doabia's Indian Election Cases volume I in which the petitioner's father's name which was entered as "Kanaia Singh" in the electoral roll was written in the nomination paper as "Ghaniya Singh" and the Tribunal held that this was not such a material difference as to cast any shadow of doubt on the identity of the petitioner and as such the nomination paper was improperly rejected. As the matter involved in this question does not admit of any doubt, we do not think it necessary to discuss other authorities which have been cited before us by the learned counsel for the petitioner. The learned counsel for the respondent No. 1 has drawn our attention to the case of Maheshwar Prasad Narayan Sinha *Versus* Ramsaraj Prashad Chaudhry, reported in the Hammond's Indian Election cases page 248, vol. II in which the facts were that in the nomination, against the proposer Guda Thakur, number of the electoral roll was given as 100, whereas in the electoral roll against this number one Gudar Thakur the son of Daun Thakur was mentioned, and against the number given by the seconder Nirsan Thakur, the son of Manbharan Thakur which was 228, in the electoral roll was shown Narsar Thakur the son of Manbharan Thakur. It was established before the Returning Officer, in that case that the proposer's father's name was not Danu Thakur but Gopal Thakur, and that the seconder's correct name was Nirsan Thakur and not Nirsar Thakur and that his father's name was not Manbharan Thakur but Guni Thakur. On these relying upon the above case of Rai Bahadur Pirthi Chand Lal Chaudhri *Versus* Babu Ram Pershad, that these were the cases of misnomer or misdescription and that Girdar Thakur and Nirsan Thakur were in fact qualified to propose and second the petitioner. The Tribunal after taking into consideration the evidence, came to the conclusion that the identity of the proposer and seconder was not established and upheld the order of rejection passed by the Returning Officer. We fail to appreciate as to how this case supports the contentions of the respondent No. 1, but it on the contrary supports the petitioner, in as much as the deciding factor in this case was the question of identity with reference to names. This is exactly what is being contended on behalf of the petitioner in this case.

Taking into consideration the facts, evidence and the law, in this case, we come to the conclusion that the difference of "Lal" and "Dayal" in the petitioner's father's name as entered in the nomination paper and the electoral roll respectively, was of a very trivial character which did not create any doubt regarding the petitioner's identity and that the Returning Officer was absolutely wrong in rejecting his nomination paper. This issue is, therefore, decided accordingly.

Issue No. 2.—After the finding on the Issue No. 1, having been given as above, the question is whether on account of improper rejection of the petitioner's nomination paper, the result of the election in the Nagaur East Constituency in question has been materially affected or not. In such a case the settled principle of law is that there is a presumption that the result of election is materially affected and we have no hesitation in applying the same to this case. It has not been pleaded by the respondent No. 1 much less any evidence has been led to rebut this presumption and therefore our finding on this issue is that the result of the election, from the constituency in question, has been materially affected, by the improper rejection of the petitioner's nomination paper.

Issue No. 3.—It has been pleaded by the respondent No. 1 in paras. Nos. 11 and 12 of his reply that the petitioner had several opportunities of getting his name in the electoral roll corrected which he has failed to do, and the cumulative effect of all the circumstances which have been discussed under Issue No. 1 which ultimately culminated in the rejection of his nomination paper, was that the Returning Officer had no option but to reject the petitioner's nomination paper. We have discussed all these circumstances under issue No. 1 where we have held that there was absolutely no scope for the Returning Officer to reject the petitioner's nomination paper. Even if the petitioner or any person on his behalf was not present at the time of the scrutiny of the nomination paper in question, it does not absolve the Returning Officer from performing his duty, laid down by the provisions of sections 33 and 36 of the Representation of the People Act, 1951 which in our opinion, had been completely lost sight of in this case by the Returning Officer. Accordingly we come to the conclusion that the petitioner is not estopped from questioning the validity of the election of the respondent No. 1 for reasons mentioned by the latter in paras Nos. 11 and 12 of his written statement and answer the issue accordingly.

Issue No. 4.—The contention of the learned counsel in connection with this issue is that since the respondent No. 16 a duly nominated candidate was joined later on after the period of limitation prescribed for filing the election petition, this petition should be dismissed as time barred. What has happened in this case is that first the petitioner had joined one Puranchand as respondent No. 16 and finding that the real name of this respondent was Nemichand son of Kanayalal, he made an application along with an affidavit for correction of this respondent's name which was granted. In fact no new respondent has been added by this application but only the name of this respondent which was wrongly mentioned in the petition has been corrected. The respondent No. 1 did not raise any objection to the petitioner's application for correcting the name of the respondent No. 16 though he was served with a notice of such application. Accordingly the question of the joinder of a new respondent does not arise and we answer this issue accordingly.

Issue No. 5.—As a result of the above findings, we hold that the petitioner is entitled to the relief claimed by him and we hereby declare the election of the respondent No. 1 from the Nagaur East Constituency to the Rajasthan Legislative Assembly, as void. So far as the question of costs is concerned, since the respondent No. 1 set up a fictitious Satish Chand in place of the petitioner and persisted in his false defence till the end, we order that he should bear his own costs and also those of the petitioner incurred in these proceedings for which we fix Rs. 250 as counsel's fee.

ORDER

The petition is allowed and the election from the Nagaur East Constituency to the Rajasthan Legislative Assembly is declared as wholly void. The respondent No. 1 should bear his costs and also those of the petitioner for whom we fix Rs. 250 as his counsel's fee.

(Sd.) M. P. ASTHANA, *Chairman.*

(Sd.) M. C. BHANDARI, *Member.*

(Sd.) GOVERDHAN DAS T. GAJARIA, *Member.*

The 20th May 1953.

PRESENT:

Shri Rawat Mal Kochar for the Petitioner.

None for the Respondents.

Pronounced, signed and dated judgment in open court.

(Sd) M. P. ASTHANA, *Chairman.*

The 29th May 1953.

[No. 19/328/52-Elec III/8301.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

